

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

**FILED**

JUL 05 2016

Clerk, U.S. District Court  
District Of Montana  
Billings

FREDERICK PAUL SMITH,

Plaintiff,

vs.

UNITED STATES POSTAL  
SERVICE,

Defendant.

CV 16-87-BLG-SPW

ORDER

Plaintiff Frederick Paul Smith filed a Motion to Proceed in District Court without Prepaying Fees or Costs and a proposed Complaint. (Docs. 1, 2). United States Magistrate Judge Carolyn Ostby entered Findings and Recommendations on June 21, 2016, in which she recommended that this Court dismiss Smith's Complaint on the basis of sovereign immunity. (Doc. 4).

Pursuant to 28 U.S.C. § 636(b)(1), Smith had 14 days to file written objections after Judge Ostby's Findings and Recommendations were filed. On June 27, 2016, Smith filed his objections and cited 18 U.S.C. § 1709, which is a criminal statute. (Doc. 4). Smith is entitled to de novo review of the Findings and Recommendations to which he objects. After de novo review, this Court adopts Judge Ostby's Findings and Recommendations and dismisses the Complaint.

## **I. Discussion**

In his objections, Smith cites to 18 U.S.C. § 1709, which is a criminal statute, and does not provide him with a civil cause of action. After reviewing Smith's Complaint, this Court agrees with Judge Ostby that Smith's claims against the Postal Service for the loss of his sapphire are barred by sovereign immunity. *See* 28 U.S.C. § 2680(b). Since the United States has not waived its sovereign immunity, the Court lacks subject matter jurisdiction.

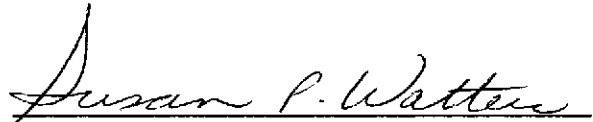
## **II. Conclusion**

The Court finds no clear error.

Accordingly, IT IS HEREBY ORDERED that:

1. Judge Ostby's Findings and Recommendations (Doc. 4) are ADOPTED IN FULL.
2. Smith's Complaint (Doc. 2) is DISMISSED for lack of jurisdiction.
3. The Clerk of Court shall close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.
4. The Clerk of Court is further directed to have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith. No reasonable person could suppose an appeal would have merit. The record makes plain the instant Complaint lacks arguable substance in law or fact.

DATED this 5<sup>th</sup> day of July 2016.

  
SUSAN P. WATTERS  
United States District Judge